

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Delvin Lamont Shaw,

Plaintiff,

-vs-

Shannon Shell, Correctional Officer at
Grand Forks County Correctional
Center (in his individual capacity),

Defendant.

Case No. 2:15-cv-102

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Pursuant to 28 U.S.C. § 636, the court has received a Report and Recommendation from the Honorable Alice R. Senechal, United States Magistrate Judge.¹ The Report and Recommendation recommends that Plaintiff Delvin Lamont Shaw's remaining excessive force claim against Defendant Shannon Shell be dismissed with prejudice on the ground that Shell is entitled to qualified immunity. Shaw filed objections to the Report and Recommendation, contending the video of the incident has been altered, two of the officers that completed incident reports gave different statements, and Shell violated North Dakota law on aggravated assault.²

Shaw's objections reiterate his assertions in opposition to Defendant Shell's summary judgment motion. There is simply no evidence that the video of the incident has been altered. Moreover, Shaw does not explain how the alleged different reports from the two officers impacts the qualified immunity analysis set forth by the magistrate judge. The undisputed facts demonstrate that Shaw repeatedly refused to comply with an officer's

¹ Doc. #31.

² Doc. #33.

orders when he continued striking the sprinkler head with a broom. Shell deployed his taser one time to incapacitate Shaw long enough for other officers to assist and safely approach and restrain Shaw. Under existing precedent³ that is binding upon this court, Shell used force against Shaw in a good faith effort to restore discipline and thus Shell did not violate Shaw's constitutional rights. Shell is entitled to qualified immunity.

Additionally, Shaw has no right to compel a criminal investigation or prosecution for an alleged violation of North Dakota law. To the extent that Shaw seeks to pursue a claim against Shell for aggravated assault, he lacks standing to pursue such a claim.

Upon consideration, the court hereby adopts the Report and Recommendation in its entirety. **IT IS HEREBY ORDERED** that Shell's motion for summary judgment is **GRANTED**; the personal capacity excessive force claim against Shell is dismissed with prejudice; and Shaw's complaint is dismissed in its entirety.

Any appeal would be frivolous, cannot be taken in good faith, and may not be taken *in forma pauperis*.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 10th day of May, 2017.

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court

³ Burns v. Eaton, 752 F.3d 1136 (8th Cir. 2014).